

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No. 772387

Turf Village Offices LLC
10233 South Dolfield Road
Owings Mills, MD 21117

2300 York Road

Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on February 3, 010 for a Hearing on a citation for violations under the Baltimore County Zoning Regulations (BCZR) section 4B-101, the operation of an illegal massage parlor in a BR zone; section 236.2, the illegal living quarters without a public special exception Hearing on property known as 2300 York Road, Suite 218, 21093.

On January 6, 2009, pursuant to Baltimore County Code §3-6-205, Inspector Jerry Chen issued a Code Enforcement & Inspections Citation. The citation was sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

The citation proposed a civil penalty of \$10,400.00 (ten thousand four hundred dollars)

The following persons appeared for the Hearing and testified: John Blumenthal, Owner, represented by Jay Liner, Esquire; Baltimore County Police Detective Scott Manz; and Jerry Chen, Baltimore County Code Enforcement Officer.

After proper consideration of all the evidence and testimony presented, the Hearing Officer finds:

A. This Citation was issued without prior Correction Notice pursuant to the Department's adopted criteria, for a violation that involves prostitution, the display of obscene material or sexual activities as defined in Section 4B-101 of the Baltimore County Zoning Regulations. BCC Section 3-6-205. The Citation was issued on January 6, 2010.

B. Jay Liner, Esq., attorney representing Respondent, requested that this Hearing be postponed until the criminal charges that have been brought against one or more tenants are resolved. He stated that the landlord will not attempt eviction of the tenants until there has been a criminal conviction. This Hearing Officer denied the request and stated that in evaluating this Citation, the Hearing Officer will take into account any apparent limitations on the landlord's ability to resolve violations prior to resolution of the criminal charges.

C. Code Enforcement Inspector Jerry Chen testified that he issued this Citation based on evidence provided by the Baltimore County Police Department, including a Police Report and photographs. He testified that he did not personally inspect the property.

D. The Police Report in the file states that the Police Department started an investigation at this property after receiving a complaint that employees of the business called "BACO Therapy" located at 2300 York Road, Suite 218 were conducting illegal massages and prostitution; that the women working there were also living in the office; and that on November 20, 2009 the anonymous complainant had observed three young women unloading several bags of groceries from a vehicle and carrying them into Suite 218. The vehicle license plate was checked and found to belong to Nam Hee Kim, whose state Massage Therapist license was found hanging on the wall in Suite 218.

E. The Police Report further states that Police Detective Manz conducted an Internet search and found an advertisement for BACO Therapy listing details of services including massages, showers, and total body relaxation. The Police Report further states, that on December 7, 2009, Detective Manz conducted undercover surveillance outside this building; observed a male customer entering and later leaving Suite 218; and stopped the customer's vehicle to interview him. The customer provided a written statement and said he has visited BACO Therapy six or seven times in the last couple of years and each time "has received a full body massage and 'Release'" which is a sexual act "commonly known as a Hand Job." Police Report page 4. The customer's written statement included a detailed description of the shower, sauna, massage and sexual favor he purchased for \$70.00 plus a \$10.00 tip. The Police Report further states that on December 16, 2009, Detective Manz again conducted undercover surveillance, observed another customer, and stopped him for an interview after he left Suite 218. This second male customer provided a written statement and said he paid \$70.00 plus a \$40.00 tip and obtained massage services and the same sexual favor of a "Hand Job," with the massage provider exposing her breasts. This second customer returned to the premises with police officers and identified the woman who gave him the massage and sexual favor, who was identified as suspect Yan Zhu Jin.

F. The Police Report further states that on December 16, 2009, when the Police Department Vice Unit searched the premises pursuant to a search warrant, persons found on the premises were three women: Yan Zhu Jin, Young Cha Sechrist, and Ying Ai Jin. The premises were searched and items found included \$2,839.00 in cash, four massage tables, one shower table, two Chiropractic and Massage Therapy Licenses, credit card reader machine, closed circuit surveillance monitor and camera, and advertising documents for BACO Therapy. Search also found two beds/mattresses, two futon style beds, a refrigerator, kitchen sink and a small portable cooking stove. Three additional male subjects arrived at Suite 218 while the police were at the location waiting for the search warrant to be signed and delivered, starting at 6:30 p.m. and while executing the warrant which started at approximately 10:30 p.m. The three additional subjects were interviewed and two stated that they have received many massages and sexual favors, specifically "Hand Jobs," from unknown Asian females at this location. The third subject stated that he is also a regular customer but that he does not receive any sexual favors even after they offer to provide sexual favors to him.

G. Baltimore County Police Detective Scott Manz testified that he was the investigating officer and wrote the Police Report. He took photos of the premises which are in the departmental file. He testified that there were two beds with mattresses in one room separate from the massage rooms, and that there was personal clothing throughout the office suite. He testified it appeared several people were living there. There is a full size refrigerator that is fully stocked. There is a hotplate set up as a stove. He testified that his training, knowledge and experience lead him to believe that these massage businesses are set up as a pretext for a prostitution business, and further testified that living quarters are frequently set up at the place of work, with Asian and Russian women frequently moved between various businesses across the country. He testified that one of the women found at the office, Ying Ai Jin, said she lived there.

H. Photographs in the file show beds and futons with bedding, with at least three appearing to be in active use. Personal belongings are obvious including suitcases partially under one bed, clothing, and household items. The kitchen includes a portable camp stove set up with a windscreen under a window exhaust fan, multiple small appliances including microwave, rice cookers, and toaster, and a full sized refrigerator/freezer that is full of groceries.

I. Detective Manz further testified that the advertised business hours for BACO Therapy were 10 a.m. to 11 p.m. and that customers were still arriving at the office after 11:00 p.m. the night of the police search. He testified that the warrant was signed at 10:15 p.m., the police started executing the search at 10:40 p.m., and left at 11:25 p.m. Detective Manz further testified that Yan Zhu Jin was arrested and is scheduled for trial on March 1, 2010 for criminal charges involving prostitution and illegal massage. The other women found at the office were not arrested.

J. Mr. John Blumenthal is the principal of the limited liability corporation that owns this commercial building, Turf Village Offices LLC. Mr. Blumenthal testified that BACO Therapy executed a lease in 2001 and exercised a lease renewal option in 2006. He supplied a copy of the lease, which identifies the tenant as "BACO, Inc., a Maryland corporation ownership being transferred to Nam H. Kim." The Tenant is further defined in the lease amendment dated November 5, 2003 as Nam Hee Kim at an address in Bowie, Maryland. A copy of her Maryland license as an authorized Certified Massage Therapist, expiring 2004, is attached. The lease provides for rent escalating annually, starting at \$23,141.28 for year 1 (2001) and set at \$30,194.04 for the year August 2010-July 2011.

K. The lease further provides that "Tenant shall not use or permit the Premises, or any part thereof, to be used for any purposes other than as the office for a certified massage therapist, tanning salon and health spa. Tenant has provided evidence satisfactory to Landlord of its massage therapy certification at the time of Lease execution and shall provide Landlord with a copy of Tenant's then current certification, or any other required governmental licenses or permits, at Landlord's request with reasonable notice during the Term of the Lease. Furthermore, no use of the Premises shall be made or permitted to be made that shall result in: ...(iii) improper, unlawful, or objectionable use..." Lease Section 11. The lease further provides that "Tenant shall at all times during the Term comply with all laws, ordinances and regulations of federal, state and local authorities pertaining to Tenant's use of the Premises ..." Lease Section 11.

L Mr. Blumenthal testified that BACO has been a tenant for nine years and he has not had any prior complaints about illegal activities. A real estate broker screened the tenant and arranged the lease agreement. He learned of the police complaint after he returned from a Christmas trip. He owns multiple properties and wants to cooperate with law enforcement, and will evict tenants if there is a legal cause for eviction. He further testified that after receiving the Police Report, he sent a letter to BACO Therapy dated January 5, 2010 notifying the tenant that there were two issues requiring correction: first, allowing employees to reside in the business premises which; is not permitted under the lease and, second, violations of Baltimore County Fire Code that must be corrected. The letter further states that if the Tenant is found innocent of prostitution charges, the Tenant can stay provided the office is used only for services recognized by the State licensing authority. The letter concludes that failure to comply immediately shall be deemed grounds for termination of the lease and eviction. Mr. Blumenthal further testified that he last visited the premises the Thursday prior to this Hearing, about 11:30 p.m., and knocked on the door of Suite 218 and did not observe any cars, lights or activity.

M. Respondent's attorney, Mr. Liner, requested that this code enforcement case be held in abeyance until the pending criminal case is resolved. He stated that the tenant's attorney has contacted Respondent to assert rights of tenancy.

N. After this Hearing, at the request of the Hearing Officer, Inspector Chen and Attorney Liner submitted brief memos to clarify zoning classification regulations applicable to this property. Inspector Chen stated in his memo that this is a two-story commercial building with multiple offices, with a zoning designation of B.R. (Business Roadside). The operation of a medical office is permitted in this zone, with services provided by licensed medical practitioners. He further stated that residential living quarters are only allowable in a B.R. zone with a Special Exception, which was not obtained for this property. Attorney Liner stated in his memo that the premises were utilized properly under the zoning classification and stated that the County had not proven a living quarters violation.

O. The evidence clearly shows that an illegal massage parlor was being operated in Suite 218. While tenant Nam Hee Kim possessed the required license for operation of a permitted Medical Office, the evidence shows that unlicensed individuals were providing massage services on a regular and frequent basis including the day of the police search, when no licensed individual was present even though services were being provided to customers. This changes the Medical Office business to a Massage Establishment. A Massage Establishment is “[a]ny establishment where a massage technician administers a massage to another person for compensation.” BCZR 4B-101. A “Massage Technician” is “[a]n individual who administers a massage to another individual for compensation,” and does not include a “Medical Practitioner” defined as “[a] physician, dentist, optometrist, chiropractor, podiatrist, psychologist, physical therapist, nurse, massage therapist or other similar health professional licensed or certified by the state.” BCZR 101.1. A Massage Establishment can only be located in an M.H. Zone (Manufacturing, Heavy). BCZR 4B-102. This portion of the Citation will be enforced.

P. The evidence also shows that an illegal residence was being operated in Suite 218. County zoning regulations provide that “Living quarters in a commercial building” can only be permitted as a special exception, which was not obtained for this property. BCZR Section 236.2. This portion of the Citation will be enforced.

Q. The evidence indicates that the illegal prostitution activities, illegal massage therapy services, and improper residential use are well established at this location. The police investigation, prompted by a complaint, began very recently, in November 2009; however, one interviewed customer told police he had been going there “for the past couple years.” The clear evidence that multiple

BACO employees were living in the office suite is particularly troubling; casual inspection of the office suite and reasonable monitoring of the commercial building should have revealed this residential use and it is reasonable to hold the landlord, who is collecting \$30,000 per year in rent from this tenant, accountable for this zoning violation.

R. Mitigating factors should be considered in determining the appropriate civil penalty and corrective order. Respondent has an appropriate commercial lease with the tenant and took the appropriate step of obtaining a copy of the tenant's State license as a Certified Massage Therapist, which qualified the tenant to use the premises for medical office services. Respondent has sent a notice letter to the tenant and has expressed a willingness to enforce lease requirements and to evict the tenant if legal grounds exist to warrant eviction.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$5,000.00 (five thousand dollars).

IT IS FURTHER ORDERED that the civil penalty will be REDUCED to \$2,000.00 (two thousand dollars) if the violations are corrected by April 16, 2010, with EITHER (1) tenant BACO Therapy removed from the premises, OR (2) if tenant BACO Therapy is still a tenant in this property, (a) all inappropriate residential items including beds are removed; (b) fire code violations are corrected; and (c) confirmation obtained from State licensing officials that BACO Therapy is duly licensed and in good standing as a medical office qualified to operate in this zone, with corrections confirmed by County inspection.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty as authorized above shall be imposed as a lien upon the property.

IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 3rd day of March 2010

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer

NOTICE TO RESPONDENT: The Respondent is advised that (1) pursuant to §3-6-206(g)(2) of the Baltimore County Code, the Respondent may make written application to the Director of the Department of Permits & Development Management within 10 days to modify or amend this order and (2) pursuant to §3-6-301(a), Baltimore County Code, the Respondent may appeal this order to the Baltimore County Board of Appeals within fifteen (15) days from the date of this order; any such appeal requires the filing of a petition setting forth the grounds for appeal, payment of a filing fee of \$150 and the posting of security to satisfy the penalty assessed.